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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 SHARON JEANNE SHUBIN,
13 Plaintiff,

14 v.

15 UNIVERSAL VACATION CLUB et
16 al.,
17 Defendants.

CV 22-02748-RSWL-AGR_x

**ORDER re:
DEFENDANT'S MOTION TO
DISMISS [23]**

18
19 Plaintiff Sharon Jeanne Shubin ("Plaintiff")
20 brought the instant Action against Defendant Universal
21 Vacation Club ("Defendant") alleging breach of warranty.
22 Currently before the Court is Defendant's Motion to
23 Dismiss [23].

24 Having reviewed all papers submitted pertaining to
25 the Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**
26 the Court **GRANTS** Defendant's Motion **WITHOUT LEAVE TO**
27 **AMEND.**

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I. BACKGROUND

A. Factual Background

Plaintiff alleges the following in her First Amended Complaint ("FAC"):

Plaintiff is an individual domiciled in Idaho. First Am. Compl. ("FAC") ¶ 3, ECF No. 22. Defendant is an international corporation which conducts business in California and is headquartered in Nevada. Id. ¶ 4. Defendant is a vacation ownership management company serving as the homeowners' association for Villa Group and Villa del Arco. Id. Defendant's members are owners of timeshare interests in approved affiliate resorts, including a resort in Cabo San Lucas, Mexico (the "Resort"). Id.

On April 25, 2008, Plaintiff and Defendant signed a promissory note ("Agreement") outlining Plaintiff's Gold Membership at the Universal Vacation Club. Id. ¶ 12. Accordingly, Plaintiff reserved a stay at the Resort for November 2019. Id. ¶¶ 8, 17. Upon her arrival, Plaintiff was shown to her suite, which was equipped with a heavy wall bed (the "Murphy Bed"). Id. ¶ 13. The Murphy Bed contained lifting components which folded up into the wall when not in use. Id. On November 25, 2019, Plaintiff was in her suite lowering the Murphy Bed when it fell out of the wall and landed on the lower part of her body. Id. ¶¶ 14-15.

As a result of the incident, Plaintiff sustained leg injuries and received medical services at a hospital

1 in Cabo San Lucas, Mexico and later at a hospital in
2 Boise, Idaho. Id. ¶¶ 19-24.

3 **B. Procedural Background**

4 Plaintiff filed her Complaint [1] on April 25,
5 2022. Defendant filed the instant Motion [25] on
6 September 29, 2022. Plaintiff opposed [28] the Motion
7 on October 11, 2022. Defendant replied [29] on October
8 18, 2022.

9 **II. DISCUSSION**

10 **A. Legal Standard**

11 Federal Rule of Civil Procedure ("Rule") 12(b)(6)
12 allows a party to move for dismissal on one or more
13 claims if a pleading fails to state a claim upon which
14 relief can be granted. Fed. R. Civ. P. 12(b)(6). Under
15 Rule 8(a), a complaint must contain "a short and plain
16 statement of the claim showing that the pleader is
17 entitled to relief" to give the defendant "fair notice
18 of what the . . . claim is and the grounds upon which it
19 rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
20 (2007); see also Fed. R. Civ. P. 8(a). Dismissal is
21 proper "where the complaint lacks a cognizable legal
22 theory or sufficient facts to support a cognizable legal
23 theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521
24 F.3d 1097, 1104 (9th Cir. 2008) (citing Balistreri v.
25 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
26 1988)).

27 "To survive a motion to dismiss, a complaint must
28 contain sufficient factual matter, accepted as true, to

1 'state a claim to relief that is plausible on its
2 face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
3 (quoting Twombly, 550 U.S. at 570). While a complaint
4 need not contain detailed factual allegations, it must
5 provide more than "labels and conclusions" or "a
6 formulaic recitation of the elements of a cause of
7 action." Twombly, 550 U.S. at 555. The plaintiff must
8 allege enough facts "to raise a right to relief above
9 the speculative level." Id. In evaluating a Rule
10 12(b)(6) motion, a court must take all well-pleaded
11 allegations of material fact as true and construe them
12 in the light most favorable to the nonmovant. Great
13 Minds v. Off. Depot, Inc., 945 F.3d 1106, 1109 (9th Cir.
14 2019). A court may generally consider only "the
15 complaint itself and its attached exhibits, documents
16 incorporated by reference, and matters properly subject
17 to judicial notice." In re NVIDIA Corp. Sec. Litig.,
18 768 F.3d 1046, 1051 (9th Cir. 2014).

19 "When the running of the statute [of limitations]
20 is apparent from the face of the complaint . . . the
21 defense may be raised by a motion to dismiss." Conerly
22 v. Westinghouse Elec. Corp., 623 F.2d 117, 119 (9th Cir.
23 1980).

24 **B. Discussion**

25 1. Judicial Notice

26 A court may judicially notice an adjudicative fact
27 that is "not subject to reasonable dispute because it:
28 (1) is generally known within the trial court's

1 territorial jurisdiction; or (2) can be accurately and
2 readily determined from sources whose accuracy cannot
3 reasonably be questioned." Fed. R. of Evid. 201(b).
4 Under the judicially created incorporation-by-reference
5 doctrine, "[a] court may consider evidence on which the
6 complaint 'necessarily relies' if: (1) the complaint
7 refers to the document; (2) the document is central to
8 the plaintiff's claim; and (3) no party questions the
9 authenticity of the copy attached to the 12(b)(6)."

10 Marder v. Lopez, 450 F.3d 445, 447 (9th Cir. 2006).

11 Judicial notice is proper for documents satisfying the
12 incorporation-by-reference doctrine. In re Maxwell
13 Techs., Inc. Derivative Litig., No. 13-CV-966-BEN RBB,
14 2014 WL 2212155, at *1 (S.D. Cal. May 27, 2014).

15 Here, Defendant has requested that the Court
16 judicially notice or incorporate by reference the
17 contract between Plaintiff and Defendant to purchase
18 timeshare interests. See Detering Decl. ¶ 3, ECF No.
19 23-1. Plaintiff cites to and attaches the same contract
20 to her Complaint to establish a landlord-tenant
21 relationship between Plaintiff and Defendant. See
22 generally FAC. Plaintiff's breach of warranty claim
23 relies on an alleged landlord-tenant relationship
24 between herself and Defendant. Additionally, neither
25 Plaintiff nor Defendant question the authenticity of the
26 documents attached to Defendant's Motion to Dismiss.
27 See generally Mot.; see also Opp'n. Therefore, since
28 the FAC necessarily relies on the contract under the

1 incorporation-by-reference doctrine, the Court
 2 incorporates the contract by reference.

3 2. Plaintiff's Breach of Warranty Claim Is
 4 Inadequately Pled¹

5 a. *Breach of Implied Warranty*

6 In arguing that there "was a warranty that the
 7 furniture in [Plaintiff's] room was fit for use and
 8 occupation," Plaintiff appears to invoke the implied
 9 warranty of habitability.² See Opp'n 4:14-15. To state
 10 a claim for breach of the implied warranty of
 11 habitability, a plaintiff must show: 1) the existence of
 12 a materially defective condition affecting habitability;
 13 2) notice to the landlord of the condition within a
 14 reasonable time after the tenant's discovery of the
 15 condition; and 3) that the landlord was given a
 16 reasonable time to correct the deficiency and resulting
 17 damages. Ghazaryan v. Shabazian, No. LACV1708245JAKSSX,
 18 2018 WL 6190347, at *5 (C.D. Cal. Aug. 2, 2018) (citing
 19 Erlack v. Sierra Asset Servicing, LLC, 226 Cal. App. 4th

20 ¹ While Defendant has argued that the two-year Mexican
 21 statute of limitations applies to any tort claims brought by
 22 Plaintiff, it is unclear whether the same limitations period
 23 applies to Plaintiff's breach of warranty claims. For this
 24 reason, the Court declines to extend the two-year Mexican statute
 of limitations to Plaintiff's breach of warranty claims.
 Instead, the Court analyzes Plaintiff's breach of warranty claims
 under the 12(b)(6) pleading standard.

25 ² Plaintiff does not specify in her FAC whether she alleges
 26 a breach of an implied or express warranty. See generally FAC.
 27 Therefore, the Court considers whether she has sufficiently
 28 alleged in her Complaint a breach of an express warranty, a
 breach of an implied warranty, or whether she has sufficiently
 alleged a breach of both.

1 1281, 1297 (2014)).

2 Here, Plaintiff failed to sufficiently plead an
3 implied warranty of habitability claim. See generally
4 FAC. Plaintiff only alleged the first element,
5 materially defective condition. Id. ¶ 33. Plaintiff
6 ultimately failed to allege the other elements of an
7 implied warranty of habitability claim because there is
8 no indication of a landlord-tenant relationship between
9 Plaintiff and Defendant. See generally id.; see also
10 Ghazaryan, 2018 WL 6190347, at *4 (noting that a tenant
11 may state a cause of action against his landlord for a
12 breach of the implied warranty of habitability).

13 Plaintiff attempts to plead an implied warranty of
14 habitability claim by asserting that she is a lodger.
15 See generally Opp'n. She asserts that she is a lodger
16 because the contract with Defendant states "membership
17 entitles the owner thereof to executive lodging rights
18 and services in an unspecified Unit . . ." FAC ¶ 30.
19 However, Plaintiff discusses her alleged lodger status
20 and her warranty of habitability claim in regard to her
21 relationship with the Resort, not Defendant. Id.
22 Furthermore, the provisions of the Agreement, signed
23 between Plaintiff and Defendant, clearly state that
24 Defendant "does not own, and will not own, the real
25 property, land, or buildings of the Resort . . . and is
26 not related" to the Resort. Ex. 1 at 16, ECF No. 23-2.
27 Thus, because Plaintiff is not in a landlord-tenant
28 relationship with Defendant, Plaintiff has not pled

1 facts "to raise a right to relief above [a] speculative
2 level." See Bell Atl. Corp. v. Twombly, 550 U.S. 544,
3 555 (2007). Therefore, Plaintiff has failed to
4 sufficiently allege a breach of an implied warranty
5 claim.

6 b. *Breach of Express Warranty*

7 A breach of an express warranty requires the
8 plaintiff to plead the "terms of the warranty,
9 plaintiff's reasonable reliance thereon, and a breach of
10 that warranty which proximately causes plaintiff
11 injury." Watkins v. MGA Ent., Inc., 550 F. Supp. 3d
12 815, 830 (N.D. Cal. 2021) (internal quotation marks and
13 citation omitted). To adequately plead the "terms of
14 the warranty, a plaintiff must identify a specific and
15 unequivocal written statement relating to the title,
16 character, quality, identity, or condition of the sold
17 goods." Id. (internal quotation marks and citations
18 omitted).

19 Here, Plaintiff fails to state a claim for breach
20 of an express warranty. Any allegation of the terms of
21 a warranty is entirely absent from the FAC. See
22 generally FAC. In addition, Plaintiff has not
23 identified any specific written statements relating to
24 her hotel room's warranted condition. See generally id.
25 Instead, Plaintiff broadly alleges that Defendant
26 "warranted that . . . the Resort would . . . be in good
27 condition and would be reasonably safe from dangerous
28 conditions such as the collapsing Murphy Bed." Id. ¶

1 35. Plaintiff has neither shown that Defendant
2 expressly warranted in writing the safety of Plaintiff's
3 hotel room, nor has Plaintiff identified any terms of
4 such a warranty.³ Ultimately, Plaintiff has not
5 adequately pled a breach of an express warranty claim in
6 her FAC. Therefore, the Court **GRANTS** Defendant's Motion
7 to Dismiss Plaintiff's breach of warranty claim.

8 3. Leave to Amend

9 "The court should give leave [to amend] freely when
10 justice so requires." Fed. R. Civ. P. 15(a)(2). In the
11 Ninth Circuit, "Rule 15's policy of favoring amendments
12 to pleadings should be applied with 'extreme
13 liberality.'" United States v. Webb, 655 F.2d 977, 979
14 (9th Cir. 1981). Against this liberal standard, the
15 Court may consider "the presence of any of four factors:
16 bad faith, undue delay, prejudice to the opposing party,
17 and/or futility." Owens v. Kaiser Found. Health Plan,
18 Inc., 244 F.3d 708, 712 (9th Cir. 2001). While the
19 Ninth Circuit has "stressed Rule 15's policy of favoring
20 amendments," leave need not be granted where amendment
21 would be "an exercise in futility." Ascon Props., Inc.
22 v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

23 Here, allowing Plaintiff to amend the FAC would be
24

25 ³ The Court previously afforded Plaintiff leave to amend her
26 original Complaint on the breach of warranty claim. In her
27 amended Complaint, Plaintiff only added allegations relating to
28 her claim for an implied warranty of habitability. See generally
FAC. Plaintiff did not add any allegations supporting her breach
of an express warranty claim. Id.

1 futile because Plaintiff has not indicated that any
2 additional facts exist that would establish a breach of
3 warranty. Given that Plaintiff and Defendant were not
4 in a landlord-tenant relationship and that no express
5 written warranty exists, a breach of warranty claim
6 cannot be cured through further amendment. Because the
7 defective breach of warranty claim cannot be cured
8 through amendment, leave to amend would be futile. See
9 Nat'l Funding, Inc. v. Com. Credit Counseling Servs.,
10 Inc., 817 F. App'x 380, 385 (9th Cir. 2020) (affirming
11 district court's denial of leave to amend because no
12 additional facts are available that would support
13 plaintiff's claim to cure its deficiencies). Therefore,
14 the Court **GRANTS** Defendant's Motion to Dismiss
15 Plaintiff's breach of warranty claim **WITHOUT LEAVE TO**
16 **AMEND**.

17 **III. CONCLUSION**

18 In sum, Plaintiff failed to sufficiently plead a
19 breach of warranty claim in her FAC. Based on the
20 foregoing, the Court **GRANTS** Defendant's Motion to
21 Dismiss Plaintiff's breach of warranty claim **WITHOUT**
22 **LEAVE TO AMEND**.

23
24 **IT IS SO ORDERED.**

25
26 DATED: December 9, 2022

/s/Ronald S.W. Lew

27 **HONORABLE RONALD S.W. LEW**
28 Senior U.S. District Judge